

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/812,596

Filing Date: March 29, 2004

Title: Techniques to adaptively control flow thresholds

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Dkt: P18327**REMARKS**

Applicant respectfully requests reconsideration of this application in view of the following remarks and the above amendments. This response is believed to fully address all issues raised in the Office Action mailed August 11, 2008. Furthermore, no new matter is believed to have been introduced hereby.

Claims 1-23 remain pending without amendment.

Initially, pursuant to MPEP 706, since the claims remain unamended, it is respectfully submitted that the next action may not be made final if new grounds of rejection are raised by the Office, pursuant to MPEP 706.

35 USC § 103 Rejection of the Claims

Claims 1-3, 7-12, 16 and 19-23 were rejected under 35 USC § 103(a) as being unpatentable over Lay (U.S. Publication No. 20050033531) in view of Hara et al. (U.S. Publication No. 20040081090).

Claims 4 and 13 were rejected under 35 USC § 103(a) as being unpatentable over Lay (U.S. Publication No. 2005/0033531) in view of Hara et al. (U.S. Publication No. 2004/0081090) and further in view of Middleton et al. (U.S. Publication No. 20050207387) and further in view of Hao (U.S. Publication No. 20030172220).

Claims 5 and 14 were rejected under 35 USC § 103(a) as being unpatentable over Lay (U.S. Publication No. 2005/0033531) in view of Hara et al. (U.S. Publication No. 20040081090) and further in view of Conley et al. (U.S. Patent No. 7080162).

Claims 17 and 18 were rejected under 35 USC § 103(a) as being unpatentable over Lay (U.S. Publication No. 2005/0033531) in view of Hara et al. (U.S. Publication No. 2004/0081090) and further in view of Erimli et al. (U.S. Patent No. 6487212).

Claims 6 and 15 were rejected under 35 USC § 103(a) as being unpatentable over Lay (U.S. Publication No. 2005/0033531) in view of Zimmermann et al. (U.S. Publication No. 20030161302).

Each of these rejections is respectfully traversed since the cited art, alone or in combination, fails to teach or suggest the claimed combination of features such as set forth in any of the pending claims.

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Initially, Applicant agrees with the Examiner that Lay alone fails to teach (or even suggest) the claimed combination of features such as set forth in claim 1. However, Applicant respectfully disagrees that Hara cures Lay's short-comings. In particular, in rejecting claim 1, the Office states:

data to be communicated between the host and the network. However, Hara et al discloses a storing device is to only store data to be communicated between the host and the network (see Figure 1 element 1 and the link a which is connecting the SW 1 to last box which is considered the host). Thus, it would have been obvious to the one skill

As for the "last box", the undersigned was unable to find any discussion in Hara about any host or that the last box is the claimed host. As the Examiner is aware, to prove inherency, the Examiner must establish that the cited art necessarily includes the limitation recited in the rejected claims. Continental Can Co. U.S.A. v. Monsanto Co., 948 F.2d 1264, 1268 (Fed. Cir. 1991). There is simply no teaching by Hara that the "last box" is the claimed host. Please recall that claim 1 defines the host specifically and requires that host interface parameters be determined, threshold capacity be set in part based on at least one host interface parameter, and that the storage device only store data communicated between the host and the network.

Also, Hara's pause frame to stop transmission is sent from SW1 when congestion in a queue of SW1 occurs. Thus, Hara strictly teaches away from the claimed transmission of a request to the storage device, such as claimed. Moreover, there is simply no teaching that storage threshold capacity in SW1 be set based on at least one network parameter and host interface parameter. Hence, Hara's storage is distinguishable from the claimed storage device.

Additionally, Hara states:

[0006] In FIG. 1, if congestion occurs in a link "a" on the transmission port side of a switch 1 (SW1), the congestion is detected by a threshold value of a buffer (queue) in the switch 1. Thereafter, in order to restrict the transmission traffic from inner switches 2-5 (SW2-SW5), the switch 1 sends a PAUSE frame to the switches 2-5. As shown in FIG. 2, the PAUSE frame sets, as the destination

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address (DA: Destination Address), a multicast address representing the PAUSE frame.

[Emphasis Added.]

Accordingly, link a is only on the transmission port side of SW1. Hence, Hara can not be reasonably relied upon to teach the claimed storage device as it is only concerned with incoming data into the “last box”. This further distinguishes the “last box” as a host since it only receives data from SW1.

Accordingly, the combination of Lay and Hara is improper and claim 1 is in condition for allowance over the cited art.

The remaining independent claims recite similar (though not identical) language and have been rejected for similar reasons as claim 1. Hence, these remaining independent claims should be allowable for at least similar reasons as claim 1, as well as additional or alternative elements that are recited therein but not shown in the cited prior art.

Also, all pending dependent claims should be allowable for at least similar reasons as their respective independent claims, as well as additional or alternative elements that are recited therein but not shown in the cited prior art.

Also, Applicant respectfully submits that reliance on the Conley et al. (U.S. Patent No. 7080162) for a 35 U.S.C. §103 rejection is inappropriate. In particular, the present application and Conely were, at the time the invention of the present application was made, commonly owned by Intel Corporation. Accordingly, pursuant to 35 U.S.C. §103(c) and MPEP §706.02, the rejection of claims 5 and 14 should be withdrawn.

Furthermore, with respect to rejection of claims , it is respectfully submitted that 4 and 13 Middleton et al. (U.S. Publication No. 20050207387) is not prior art as it was filed after the present application. If the Office is relying on Hara’s parent provisional, it is respectfully requested that the Office base its rejections on the provisional application if a next Action is to be mailed in the present matter.

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Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (303.800.6678) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-4238.

Respectfully submitted,

CUSTOMER NUMBER: 50890

Telephone Number: 303.800.6678